

Remarks

Receipt of the Office Action of July 15, 2003 is gratefully acknowledged.

Claims 26 and 31-35 are pending and have been further examined with the following result: (1) claim 31 is allowed; (2) claims 26, 32, 33 and 35 are rejected over art; and (3) claim 34 is rejected as indefinite because of "redundancy to claim 31."

To overcome the rejection of claim 34, it has been amended to change "said first, second, third, fourth and fifth cushioned layers....." to "said fourth and fifth cushioned layers....."

Claim 32 has also been amended to correct a typographical error.

There remains the rejection of claims 26, 32, 33 and 35 as: anticipated under 35 USC 102(b) by Pendergast (claims 32 and 35); unpatentable under 35 USC 103(a) over Pendergast in view of Wang and Levy (claim 26); and unpatentable under 35 USC 103(a) over Pendergast in view of Wang (claim 33).

These rejections are respectfully traversed.


Regarding claims 32 and 35, claim 32 has been amended to recite that at least the first, second and third cushioned layers define a surface which is raised with respect to the sole surface. This feature is not disclosed in Pendergast where all the layers are flat. As previously noted, Pendergast does not refer to his layers as cushioned layers but instead to flat layers. See, col. 3, lines 42 - 44, which recite that "All of the segments are of the same thickness such that, when assembled, the device will be 'flat' from side to side, and functionally flat from posterior to anterior." This disclosure cannot be read as "cushioned layers" each with "a surface which is raised with respect to the sole surface."

Regarding claim 26, it too recites the first, second and third cushioned layers with

"a surface which is raised with respect to the sole surface." Regarding the rejection of claim 26, it is necessary to consider whether Wang or Levy teach the raised surface feature. It is respectfully submitted that they do not. It was previously noted, and is again repeated that Wang is not analogous to the present invention or event o Pendergast, so that the combination of their teachings is without basis. Levy also is of no assistance because it also does not teach the "raised surface."

Applicant will shortly be submitting declarations to support the assertion that the venous outflow of blood is improved with the present invention.

Respectfully submitted,



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October 15, 2003

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